SUPREME COURT, U. S.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. 880

EMMANUAL BLAZ MRKONJIC-RUZIC,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on October 24, 1968.

CITATIONS TO OPINIONS BELOW

An Indictment charging petitioner with a violation of 18 USC §1001, false statement to an agency of the United States, was returned on January 7, 1966, by the Grand Jury of the United States District Court for the Northern District of California, Northern Division, Sacramento. In substance, the Indictment charges petitioner with knowingly giving false answers while under oath to questions asked of him in an Application to File Petition for Naturalization lodged by petitioner at Sacramento on June 17, 1965.

Upon his plea of not guilty petitioner was tried and convicted by a jury on March 15, 1967, before The Hon. Sherrill Halbert, United States District Judge. On March 29, 1967, petitioner was sentenced to the statutory maximum of 5 years imprisonment pursuant to 18 USC §4208 (c) and ordered sent for a 90 day study subject to modification in accordance with 18 USC §4208 (b).

Timely appeal was made.

The per curiam opinion of the Court of Appeals is unreported and is printed in appendix B hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on October 24, 1968. Rehearing was denied on December 2, 1968. The jurisdiction of this Court is invoked under 28 USC Section 1254 (1).

QUESTIONS PRESENTED

I

Whether a defendant convicted of a crime in a federal court is deprived of his Fifth Amendment liberty by the divergent interpretations placed on the charging statutory language by the several district courts.

II

Whether this court should exercise its supervisory power over federal district courts by correcting judicial conduct at the trial court level which foreclosed the defendant from a fair trial and thereby constituted a denial of due process.

STATUTE INVOLVED

The statutory provision involved is 18 USC Section 1001. It is printed in appendix A.

STATEMENT

Adversary counsel in effectuating their respective roles at times develop polarized views and opinions as to the most efficacious manner of trial fact presentation. This case bears witness to such polarization.

On the one hand, government counsel's position is simple. Petitioner signed an application for naturalization under oath. One particular answer among others was untrue.

The question was

"Other names I have used are .....".

The directions supplied on the form of "Application to File Petition for Naturalization" were:

> "Print or type here any other name you have ever used, including maiden name".

The petitioner typed in "None", crossed it out and typed in "Emmanual Blaz Mrkonjic Ruzic". In answer to a previous question "My Name is....." the petitioner had typed "Emmanual Blaz Rusic".

Page 5 of the form of application then used contained the following admonition:

> *"Unless you answer* all *items in full,* it may be necessary to *return* the application to you". (Emphasis ours.)

The form now employed by the Immigration and Naturalization Service contains a warning:

> "Penalties: Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact."

At a hearing conducted under oath in Sacramento by Earl C. Bray, attorney for the Immigration and Naturalization Service, hereafter referred to as the Service, petitioner denied the use of a name other than Emmanual Blaz Mrkonjic Ruzic (RT 286, 291).

Ultimately petitioner signed, under oath, a four page document in two parts, Form N-400 (Rev. 8-1-63) that is the basis of this Indictment.

Over a period of years, petitioner in fact had used many names. Among them are Manuel Blaz Ruzic

(RT 34) used in his so-called *Curriculum Vitae* for Stanford University where he was a graduate student. To an investigator for the Service in a so-called Private Bill Unit hearing, John Ruggiero of New York City, petitioner gave the name Manuel Blaz Ruzic (RT 65), the family name Bojanic (RT 105) and Emanuel Blaz Rusic (RT 105). With Father Thomas J. Malone of the Maryknoll Fathers, while petitioner was a seminarian, he was known alternately as Bojanic and Ruzic (RT 206, 207). To Charles Bergerson of the Voice of America where the petitioner worked intermittently he used both Bojanic and Ruzic (RT 234, 244 and 258).

When examined in Dallas, Texas, by Donald C. Mock, of the Service's Travel Control, at a time when petitioner was a student at Texas Christian University, he used Ruzic (RT 423) and Ignatius Bojanic (RT 431). The government file also revealed that when admitted into the country he affected Cherubim Ruzic, Dr. Emmanuel Mozart and L'Abbe Blaz Mrkonkic Ruzic (RT 434).

When petitioner took the stand he admitted the use of Blaise C. Ruzic (RT 535), Ignatius Bojanic (RT 543), Professor and Reverend Emmanuel B. Ruzic (RT 597), E. B. Roseman (RT 612) and Reverend Blaz Mrkonjicruzic (RT 628). He also received mail from Yugoslavia under another name, Kraljich (RT 657).

The story of how petitioner came to use these names is involved but interesting. Using petitioner's recitation as the basis or frame, reference will also be

made to the government's case where the same or similar material was presented.

Petitioner was born in Yugoslavia, in the part known as Croatia in 1930 (RT 444). He, and his family moved to Zagreb and at age 19 he entered the theological seminary affiliated with the University of Zagreb (RT 446). As the result of local civil disorders, he and other seminarians were arrested and detained for a three month period in 1951 (RT 447). He fled Yugoslavia in 1952 (RT 449) passing through Italy (RT 449) en route to Paris, France.

While in Paris he was hospitalized for TB (RT 450) and was a student at several seminaries (RT 248, 249). Leaving France in 1953 (RT 249, 250), he went to Caracas, Venezuela (RT 451) and ultimately arrived in Canada (RT 248-250). As a student, he entered the USA in August, 1954 (RT 247) where he enrolled at Catholic University, Washington, D.C. (RT 459-460).

Periodically he would return to Canada and on one of his trips, and while a guest at a convent at Sherbrook, he purloined the transcript of grades and studies, known in Yugoslavia as an Index, from a nun named Sister Ignatius or Matija Bojanic or Sister Ignacija (RT 460, 461, 139, 140). He denied stealing the Index, saying that the sister gave it to him to translate. He did not know what happened to the original (RT 620, 621). The Index was altered, translated into English and used by defendant as his own wherever he enrolled as a student in the USA whether it was Catholic University, Abiline Christian, Texas

Christian, University of California or Stanford. From and through the use of the Index he arrogated to himself the names Ignatius and Bojanic.

Present at the private bill hearing in New York City conducted by Mr. John Ruggiero of the Service was a Maryknoll priest, a Father John McGovern, whose subsequent letter to Father Malone reviews petitioner's life up to January, 1968 in a most derogatory fashion. Beginning at page 244 and continuing through page 255 of the transcript is the record of Ruzic's failures as a seminarian in Paris, Canada and the USA, his use of the forged Index, his religious vacillations between the Catholic and Lutheran faiths, his various jobs and his manipulation of others for his benefit.

After either being expelled from or voluntarily leaving the Maryknoll Fathers (RT 205) on January 16, 1958, he returned to Canada (RT 117), only to return to Abilene, Texas in March, 1958 (RT 484).

Ruzic was deported, or in lieu left voluntarily, to go to Canada (Exhibit 15) via Buffalo, New York, in the latter part of 1958 (RT 485, 486). Upon being refused readmittance at Buffalo in January, 1959 (RT 486) he surreptitiously reentered through Hamilton, Ontario, and Detroit and returned to Dallas (RT 486). Apart from a California sojourn at Sequoia National Park where he worked in the summer of 1959 (RT 487, 488) he remained in the Dallas area as a student at Texas Christian University (RT 489-493) receiving permanent resident status in May, 1960 (RT 493).

Ruzic ultimately came to San Francisco (RT 494), lived in Monterey during the summer of 1960 (RT 497), in the fall of 1960 at Palo Alto (RT 320, 498), enrolled and was a teaching assistant at the University of California during most of 1961 (RT 321, 499-501). After acceptance as a student at Stanford, petitioner lived in Palo Alto from the spring of 1962 up to the spring of 1964 (RT 321, 502-509) ultimately receiving a Master's degree from Stanford.

From these peregrinations, one may properly doubt if Ruzic ever was a seminarian in Yugoslavia. But in any event, building upon the use of a false name, Ignatius Bojanic, and a false set of student documents taken from a Croatian nun, petitioner came a long way. To offset these undisputed and unsavory facts, defense counsel, William Lally, formerly Assistant United States Attorney, sought to establish through the enormity of the file in the Service's possession that no government official was in fact deceived, despite Ruzic's admittedly untrue answers at his Sacramento hearing and elsewhere.

Mr. Lally began to execute his plan immediately after the jury was selected, countering government counsel's opening statement with one of his own in which he accused the government of bad faith and trickery (RT 24). While the court was critical of his conduct (RT 28) its remarks were restrained (RT 28-30).

Later defense counsel used the word "snatch" to characterize action by the United States attorney,

which brought on a mildly critical exchange between the court and counsel (RT 46).

Defense counsel sought to raise a *Miranda* type objection as to evidence of the New York City Private Bill investigation conducted by Mr. Ruggiero for the Service but did not get very far (RT 69).

A more vitriolic exchange occurred between the court and counsel (RT 82), which can be denominated feisty on the part of defense counsel.

Later on that same trial day, another rather heated exchange between the court and counsel occurred over counsel's request to see the Service's voluminous Ruzic file (RT 115-117).

Another exchange begins on page 234 where Mr. Lally snidely characterized as "kindly" the turning over to him of some lengthy documents regarding Mr. Ruzic's early American career. By this point of time the court has a view of Mr. Ruzic and his activities that is at odds with defense counsel's attempts in his opening statement to make out his client as "lily white" (RT 238), and the court said so in a no uncertain but restrained fashion (RT 239-240).

Faced with the necessity of laying a foundation requisite to the admission of a document, government counsel inquired if the requisite foundation could be waived (RT 277). Defense counsel responded in querulous fashion that "Mr. Lally waives nothing". Aptly, the court described this attitude as "unreasonable" as well it was.

At the conclusion of the testimony of the government witness, the Court ordered defense counsel to do all of his foundational cross-examination or be precluded from raising the issue (RT 279). Again the language of the court was firm but temperate. It would brook no trifling.

Because government counsel kept repeatedly drawing forth documents from a file on his table and offering them in evidence, one at a time, defense counsel asked that the whole file be admitted and that he be permitted to examine it in detail (RT 362). The court told him to stop—that he could put his own case in later—Lally persisted—again the court stopped him (RT 363) but without acrimony, merely with asperity and shortness.

A witness from the California State Department of Education, a Mr. Price, brought to court an Application for Teaching Credentials and associated documents to the effect that as late as 1965, petitioner continued to use the altered Index of Sister Ignacija Bojanic as his own (RT 363-384). After prolonged colloquy over admissibility and foundation, the court strongly admonished defense counsel for constantly, through the office of cross-examination, trying his case before it was his turn (RT 373).

But if the court leaned on defense counsel at every possible opportunity with varying weight, consider the holocaust unleashed at Mr. Lally for 5 pages of transcript (RT 435-440). This outburst actually was begun when defense counsel objected to the prosecutor employing the phrase "sneaked back in" to char-

acterize Ruzic's return to the USA through Detroit rather than through Buffalo, his exit port (RT 435). In the presence of the jury, the court was bitingly critical of Mr. Lally, telling him that he was trying to testify himself (RT 436), telling the jury to pay no attention to the lawyers (RT 436) and then once the jury was excused really letting defense counsel have it right between the eyes. Lally was severally accused of baiting the court (RT 437), trying his case by innuendo (RT 437), and because of his skill, intentionally doing things to disrupt the normal court procedure (RT 438). The court criticized defense counsel for not standing while objecting and for making a speech (RT 439). This language would be enough to cow all but the toughest defense lawyer in criminal cases.

But its worst effect was in telling the jury "not to pay attention to these lawyers" as if to say to the jury that defense counsel was caviling with them to hide from them the truth. Such a characterization could only have substantially injured whatever chances with the jury Ruzic might have had.

Ruzic's cross-examination was devastating. He admitted that he might have claimed falsely to have studied in Rome (RT 541), not telling about all the places at which he had studied (RT 541, 570), exaggerating years, courses taken, and grades received at some places of study (RT 542, 543), using the purloined name of Bojanic (RT 546), using Sister Bojanic's Index as late as 1961 (RT 551), at the University of California as his own (RT 541, 570).

Ruzic also admitted giving Sister Ignacija's records to Texas Christian as his own (RT 551), showing them to the Maryknoll Fathers (RT 551), giving them to Catholic University (RT 552), and claiming an academic degree never awarded to him (RT 554).

Ruzic was forced to admit that in every instance of entering a school or university using his false credentials, he was unable to perform, lacked the claimed background and failed in his studies (RT 558). He also admitted to giving false background information when seeking employment from the Voice of America (RT 579), falsely claiming to have studied at the Sorbonne in Paris (RT 582), and falsely claiming to have worked in Paris for UNESCO when applying for a teaching position at Great Falls College (RT 586, 587). The final clincher was having to admit that he had never presented himself in this country in a true, honest and correct fashion (RT 589).

While cross-examination went on for 100 more pages, it was just more of the same false representations (RT 590 to 692), including grade tampering at TCU (RT 599), even to having to admit that what purported to be his own transcript, received from Yugoslavia was the same as Sister Bojanic's Index (RT 623-624). To further accentuate the obvious, Ruzic was finally forced to admit that he was untruthful to the Service when he failed to inform the Service of his voluntary return to Canada to escape deportation (RT 627). So that anything done by way of rehabilitation on redirect examination was probably for naught. The jury had heard too much.

Obviously, as a matter of hindsight, this was no case to try before a jury. The government, as usual, had too much evidence. But defense counsel was entitled to a break better than he got, as was R[illegible]zic. Again, hindsight dictates a law attack and at b[illegible]t a court trial. But who knows now what was best?

REASONS FOR GRANTING THE WRIT

1. To be actionable under 18 USC §1001 the declaration or statement must be material in that it would bear on the decision-making process of a department or agency. *Brandow v. U.S.*, 9th Cir. 1959, 268 F. 2d 559, 562 and 564, or the Immigration and Naturalization Service, *Dear Wing Jung v. U.S.*, 9th Cir. 1962, 312 F. 2d 73, *U.S. v. Udani*, D.C. Cal. 1956, 141 F. Supp. 30, and *U.S. v. Bridges*, D.C. Cal. 1949, 86 F. Supp. 922.

Attention will now be directed to two lines of authority in the federal courts that deal with the simple negative response. One line holds that a denial or negative response is within §1001. Examples are *U.S. v. Blake*, D.C. Mo. 1962, 206 F. Supp. 706, *U.S. v. Glarraputo*, D.C. N.Y. 1956, 140 F. Supp. 831, cf. *U.S. v. Adler*, 2nd Cir. 1967, 380 F. 2d 917, 922. The other line holds that a negative response is not a statement or report within the ambit of §1001. It is exemplified by *Paternostro v. U.S.*, 5th Cir. 1962, 311 F. 2d 298, 305 and 309, *Friedman v. U.S.*, Mo. Cir. 1967, 374 F. 2d 363, *U.S. v. Davey*, D.C. N.Y. 1957, 155 F. Supp. 175, 176, *U.S. v. Stark*, D.C. Md. 1955, 131 F. Supp.

190, 199, *U.S. v. Philippe,* D.C. S.D. N.Y. 1959, 173 F. Supp. 582, and *U.S. v. Allen,* D.C. S.D. Cal. 1961, 193 F. Supp. 954.

These divergent views pivot upon whether the governmental agency to whom the false report or statement was made is an investigational agency or one that can act independently upon the supplied false information and whether "no" or "none" by ordinary language usage is a "statement or report" within the meaning of §1001. Perhaps there was also some humanity in the liberal line represented by *Paternostro,* ante, and *Allen,* ante, in that the defendant is given the benefit of a strict and narrow statutory construction.

It is submitted that, regardless of the reason, *Paternostro,* ante, is more persuasive and yields a result which your petitioner asks this court to adopt. In any event, the conflict among the federal courts should be resolved.

2. The trial judge must be impartial. Even an *appearance* of bias may fatally infect the proceedings.[1] This task is not an easy one.

> "A judge, at least in a Federal Court, is more than a moderator . . . Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that, in the end, depends primarily upon the judge."[2]

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[1] *Bollenbach v. United States,* 326 U.S. 607; *Wilson v. United States,* 250 F.2d 312.

[2] *Brown v. Walter* (C.C.A. 2, Vt., 1933), 62 F.2d 798, 799-800 (1933). This statement was made by the late Judge Learned Hand, speaking for the Second Circuit.

The trial judge must be patient and "not be thrown off balance by provocations which frequently occur during a trial." In an Illinois case, the court says: "It is essential that jury trials shall be managed fairly, and that trial judges shall not only be just to both sides, but that they shall conduct themselves, in such a manner that an impartial state of mind is apparent to all concerned."[3]

> "The Judge presiding at a trial should maintain an impartial attitude. He must appear neutral, and exercise patience toward the participants. The judge should not be thrown off balance by those *provocations* which a trial contest can be expected to produce. Even if exposed to *great provocation,* the trial judge is not thereby justified in accusing a party's lawyer of unfairness or in holding him up to contempt before the jury, and should not show hostility to him or otherwise treat the attorney so as to prejudice the interests of his client. The required administration of the trial and necessary control of conduct of counsel can and should be performed effectively without inflicting unnecessary damage to a party's cause."[4] (Emphasis ours.)

> "The real object of a trial is to secure a fair and impartial administration of justice between the parties to the litigation. The responsibility of striving for an atmosphere of unpartiality during the course of a trial rests upon the trial judge. His conduct in trying a case must be fair to both sides, and he should refrain from remarks which

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[3]*People v. Marino,* 414 Ill. 445, 111 N.E.2d 534, 538 (1953).
[4]*Skelton v. Beall* (Fla.), 133 So.2d 477, 481 (1961).

might injure either of the parties to the litigation."[5]

3. Determination of the question whether the trial judge has overstepped the bounds of judicial propriety must be made on a case-to-case basis.[6]

There are certain principles which can serve as guides to measure judicial conduct.[7] Among them are:

(1) Harassment of defense counsel, prejudicial to his client—and this can take many forms—may also require a new trial. For example, the Court may not hamper or embarrass counsel in the conduct of the defense by disparaging remarks or rulings which prevent counsel from effectively presenting his case or from obtaining full and fair consideration of that case by a jury.[8]

(2) A trial judge should never reprimand or censure counsel in the presence of the jury. "Trial Courts should proceed with dignity, rule impartially, and say as little as possible in the trial."[9] A trial attorney "owes to the Court, because of the position he occupies, the utmost deference and respect," but, "the court owes to him an equal obligation of courtesy and consideration. . . . In the heat of a trial sharp differences of opinions do

[5] *Hanzen v. St. Paul City Ry. Co.*, 231 Minn. 356, 43 N.W.2d 260, 264 (1950).

[6] *Brock v. North Carolina*, 344 U.S. 424; *Riley v. Goodman*, 315 F.2d 232.

[7] *Herron v. Southern Pacific Co.*, 283 U.S. 91.

[8] *People v. Becker*, 210 N.Y. 274, 104 N.E. 396; *People v. Kepner*, 267 App. Div. 838, 46 N.Y.S.2d 111; *People v. Adler*, 274 App. Div. 820, 80 N.Y.S.2d 210.

[9] *Kent v. State*, 53 Okla. Crim. 276, 10 P.2d 733 (1932).

arise and things are said which would have been better left unsaid."[10] This does not justify the reprimanding of counsel in the presence of the jury.

(3) "The trial judge should use only such language as is essential to the requirements of the situation and should not belittle counsel's argument or cast unwarranted reproaches on counsel. In the eyes of the jury counsel and client are so closely identified that a trial judge's belittling of counsel is often prejudicial to the client."[11]

Quite often, what appear to be routine comments by the court, when viewed independently are insufficient to warrant reversal. But when the record is reviewed in its entirety by an appellate court, the trial court's remarks may, in the aggregate, reveal a clear and consistent pattern of judicial bias.[12]

In short, an attorney is entitled to treatment from the trial judge that will not prejudice the rights of his client. This is a matter of right, not of indulgence.[13]

Appellate courts are exceedingly reluctant to reverse cases because of the misconduct of the trial judge. They are more inclined to recognize the misconduct, but pardon the judge on the theory that the

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[10] *Goldstein v. United States* (C.C.A. 8, 1933), 63 F.2d 609, 613.

[11] *Weinberg v. Pavitt*, 304 Pa. 312, 155 Atl. 867, 871 (1931).

[12] *Sunderland v. United States*, 19 F.2d 202; *People v. Becker, supra*, note 8; *Commonwealth v. Fields*, 171 Pa. Super. 177, 90 A. 2d 391; *State v. Phillips*, 59 Wash. 252, 109 Pac. 1047; *Robertson v. State*, 38 Tex. 187.

[13] *Grock v. United States*, 298 Fed. 544.

misconduct was not shown to prejudice the jury, which can rarely be done. This affords the litigant no relief. It is "like a rapier thrust in a vital spot, then withdrawing the blade with apologies."[14] The correction for this widespread and well-recognized problem rests almost entirely with the judiciary. Constructive criticism never hurts anyone and may help. "Let justice be done lest the Heavens fall."[15]

In the light of the foregoing, it is urged that the district court did in fact deny to this petitioner his right to a fair trial.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
December 19, 1968.

Respectfully submitted,
GREGORY S. STOUT,
Attorney for Petitioner.

(Appendices A and B Follow)

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[14] *Brotherhood of Railroad Trainmen v. Brown*, 170 Okla. 67, 38 P.2d 529, 532 (1934).

[15] Remarks of Chief Judge Harold M. Stephens at the laying of the cornerstone of the United States Courthouse for the District of Columbia, December 25, 1950.

Appendix A

18 USC 1001—Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both. June 25, 1948, c. 645, 62 Stat. 749.

Appendix B

United States Court of Appeals
For the Ninth Circuit

No. 22,108

Emmanual Blaz Mrkonjic-Ruzic,
Appellant,

vs.

United States of America,
Appellee.

[October 24, 1968]

On Appeal from the United States District Court.
for the Eastern District of California

Before: CHAMBERS, HAMLEY and MERRILL,
Circuit Judges

Per Curiam:

Appellant was properly charged. *Conerly v. United States,* 350 F.2d 679 (9th Cir. 1965).

Appellant's answer in the negative in response to an inquiry constituted a false representation under 18 U.S.C. §1001. *Tzantarmas v. United States,* ..... F.2d ..... (9th Cir. 1968) [22,798 October 17, 1968]; *Brandow v. United States,* 268 F.2d 559 (9th Cir. 1959).

Appellant was not deprived of a fair trial by reason of the District Court's reponse to provocative conduct on the part of appellant's trial counsel.

Judgment affirmed.